Supreme Court, U. S.
FILED
JAN 2 1981
MICHAEL RODAK, JR., CLERK

No. 80-757

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

NEW YORK MERCANTILE EXCHANGE, *et al.*,
Petitioners,

v.

NEIL LEIST, PHILIP SMITH AND INCOMCO,
Respondents.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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December 31, 1980

In the

Supreme Court of the United States

October Term, 1980

No. 80-757

New York Mercantile Exchange, *et al.*,

Petitioners,

v.

Neil Leist, Philip Smith and Incomo,

Respondents.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

The consolidated petitions for writs of certiorari to the United States Court of Appeals for the Second Circuit in Docket Nos. 80-757,895,936 present the question of whether there is a private cause of action for damages under various sections of the Commodity Exchange Act, 7 U.S.C. §§ 1-24 (the "Act"). In *Leist* v. *Simplot*, 2 CCH Comm. Fut.L.Rep. ¶ 21,051 (2d Cir. 1980) the court held by a divided panel that there was such a cause of action. In a related action, *Curran* v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 622 F.2d 216 (6th Cir. 1980), which is also the subject of a pending petition before this Court in Docket No. 80-203, the United States Court of Appeals for the Sixth Circuit by a divided panel had earlier held that there was a private cause of action.

We are filing this supplemental brief to bring to the Court's attention the decision of the United States Court of Appeals for the Fifth Circuit rendered on December 16,

1980 in *John Rivers* v. *Rosenthal & Co.* (No. 79-1313) where the court unanimously held that there was no private cause of action under various sections of the Act. A copy of the opinion is set forth in a separately bound appendix submitted jointly by us and by the petitioners in Docket Nos. 80-895 and 80-936.

Thus there now exists a direct conflict between courts of appeals on this important question of federal law. For this additional reason, the writ should issue.

Respectfully submitted,

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